IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

AS.No. 367 of 1997(E)
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OS.4/1993 of SUB COURT, KASARAGOD
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APPELLANT: PLAINTIFFS:
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1. MELOTH KRISHNAN NAIR
S/O.NARAYANAN NAIR,
RESIDING AT MUTHANDKAM OF
BEDADKA VILLAGE OF KASARGOD TALUK.

2. MELOTH THAMBAN NAIR,
-DO- -DO-

BY ADV. SRI.K.SHRIHARI RAO
SRI.K.R.RAGHUNATH

RESPONDENTS: DEFENDANTS:
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1. ABDUL KHADAR, S/O.HUSSAIN KUNHI (DIED)
RESIDING AT MOOLAYADKAM, MULIYAR VILLAGE,
KASARGOD TALUK, P.O.MULIYAR, KASARGOD DISTRICT.

ADDL.2. DAINABI, W/O.LATE ABDUL KHADER,
RESIDING AT MOOLAYADKAM, MULIYAR VILLAGE,
KASARGOD TALUK, P.O.MULIYAR, KASARGOD DISTRICT.

ADDL.3. JAMEELA, D/O.LATE ABDUL KHADER,
-DO- -DO-

ADDL.4. AHAMED, S/O.LATE ABDUL KHADER,
-DO- -DO-

ADDL.5. SHAHABUDEEN, S/O.LATE ABDUL KHADER,
-DO- -DO-

ADDL.6. AZEEZ, S/O.LATE ABDUL KHADER,
-DO- -DO-

ADDL. 7. SHAREEF, S/O.LATE ABDUL KHADER,
-DO- -DO-

ADDL.8. HAREES, S/O.LATE ABDUL KHADER,
-DO- -DO-

(ADDL. RESPONDENTS 2 TO 8 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF DECEASED SOLE RESPONDENT, VIDE ORDER DT. 13.3.2007 IN I.A.NO.3099/2005)

BY ADV. SRI.P.K.MUHAMMED
SRI.P.K.MUHAMMED

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 05/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.PADMANABHAN NAIR, J.**

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A.S.No. 367 of 1997

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Dated this the 5th September, 2007.

**J U D G M E N T**

Plaintiffs in O.S.4/1993, a suit for specific performance are the appellants. They have filed the suit alleging that the deceased first respondent entered into an agreement for sale of properties. In the plaint it was averred that on 19.8.1992, an agreement for sale was entered into, by which, the defendant, first respondent, had agreed to convey properties for a consideration of Rs.284/= per cent to the appellants, and received an amount of Rs.5000/= as advance. It was alleged that even after the expiry of the period of agreement, first respondent, did not execute the sale deed. Hence, the suit for specific performance. The defendant contented that the agreement was a fabricated one, and actually the 1st respondent, received a loan of Rs.2000/= from the appellants. The appellants demanded certain documents as security for the loan amount and with the help of that documents, the agreement was fabricated.

2. To substantiate the contention, plaintiffs examined three witnesses. PW.1 is the second plaintiff and Pws. 2 and 3 are independent witnesses. The trial court considered their evidence and found that the agreement was not a genuine one. The court below discussed the evidence of Pws.1 to 3 and found that there were material contradictions in their oral evidence. It was found that there were three different versions regarding the actual execution of the agreement. But in view of the admission made by the defendant that he received an amount of Rs.2000/=, a decree was passed in favour of the appellants to recover that amount with 15% interest. Challenging that decree, plaintiffs have filed this appeal, as early as on 23.6.1997.

3. I have carefully gone through the judgment of the court below. The contention put forward by the deceased first respondent was that he was asked to affix signature in certain blank stamp papers. He also contented that he actually borrowed an amount of Rs.2000/=, undertaking to repay the same with 15% interest. The trial court accepted that version. The trial court has also considered the oral evidence of Pws. 1 to 3. On proper appreciation of the evidence, the trial court, found that the agreement is not a genuine one. That is a finding of fact based on good evidence. I do not find

any reason to admit the appeal. There is no merit in the appeal, and it is only to be dismissed under Order XLI Rule 11 of Civil Procedure Code.

In the result, the appeal is dismissed in limine.

**K.PADMANABHAN NAIR,**
**JUDGE**

**nj.**

**K.PADMANABHAN NAIR, J.**

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A.S.No. 367 of 1997

**J U D G M E N T**

Dated: 5th September, 2007.

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